

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:)	
)	
CIRCUIT CITY STORES, INC., <u>et al.</u>,)	Case No.: 08-35653-KRH
Debtors.)	(Chapter 11)
<hr/>		
REVEREND DWAYNE FUNCHES,)	
Individually, and as Independent Executor of)	
the Estates of Travis Funches, Dione Funches,)	
and Dwayne Funches, Jr., Emily Funches,)	
Lovera Funches, and Shatira Funches,)	
Individually,)	
Movants,)	
)	
v.)	
)	
CIRCUIT CITY STORES, INC., <u>et al.</u>,)	
Respondent.)	

**MOTION FOR RELIEF FROM AUTOMATIC STAY OF
11 U.S.C. § 362(A) WITH SUPPORTING MEMORANDUM OF LAW AND
REQUEST FOR SHORTENED NOTICE AND EXPEDITED HEARING**

COME NOW THE MOVANTS, Reverend Dwayne Funches, also known as Bishop Funches, individually, and as Independent Executor of the Estates of Travis Funches, Dione Funches, and Dwayne Funches, Jr., Emily Funches, Lovera S. Funches, and Shatira Funches, individually (collectively, the "Movants"), by counsel, pursuant to 11 U.S.C. §§ 105(a) and 362(d), the *Federal Rules of Bankruptcy Procedure*, Rules 4001 and 9014 (the "*Bankruptcy Rules*"), the *Local Bankruptcy Rules* of the United States Bankruptcy Court for the Eastern

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District of Virginia, Rules 4001(a)-1 and 9013-1(N) (the "*Local Rules*"), and all other applicable legal and equitable authorities, and state the following as and for their motion for relief from the automatic stay (the "*Motion for Relief*") for cause. The Movants respectfully request and move the Court to enter an order granting them immediate and limited relief from the automatic stay in the above-captioned matter and respectfully request a shortened notice period and an expedited hearing thereon, so that they may continue with pre-petition state court litigation pending in Chicago, Illinois since 2005, in a negligence and strict liability action brought against the defendants as a result of a house fire stemming from a television purchase and servicing that killed three children in the Movant's family. The Movants request this relief in an expedited fashion because of time-sensitive developments in that litigation, including a significant hearing to be held on December 4, 2008, and several key depositions previously-scheduled for the coming weeks. A hearing and several depositions have had to be cancelled already due to this bankruptcy filing. As grounds for their *Motion for Relief*, the Movants state the following:

A.
Jurisdiction and Background:

1. On or about November 10, 2008 (the "Petition Date"), the debtors, Circuit City Stores, Inc. (the "Debtors") filed a voluntary petition for relief under Chapter 11 of Title 11 of the *United States Code* in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond, Division.

2. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B.
Relief Requested:

3. On March 17, 2005, the Movants, by counsel, filed a lawsuit with the Cook County Circuit Court, Illinois (the "State Court"), which was assigned Case No. 2005-L0003088

and styled as *Reverend Dwayne Funches, Individually and as Independent Executor of the Estates of Travis Funches, Dione Funches, and Dwayne Funches, Jr., Emily Funches, Lovera S. Funches, and Shatira Funches, Individually v. City of Chicago, a municipal corporation; Circuit City Stores, Inc.; RCA Corporation; and Thomson Inc.* (the "Lawsuit").

4. In the Lawsuit, Reverend Dwayne Funches, the father and Independent Executor to the Estates of his three late children who perished in a house fire and family members who were injured in same and/or suffer from the deaths of those family members, collectively seek to pursue the limits of any insurance policy or policies insuring the Debtors for the matters raised in the Lawsuit.

5. Through this *Motion for Relief*, the Movants are requesting that they be permitted the limited and immediate relief to continue without further interruption or delay to prosecute the Lawsuit to judgment in the State Court, to collect on any such judgment from any available insurance coverage(s), and/or settle the Lawsuit and collect any settlement(s) from any available insurance coverage(s).

6. The Movants' Lawsuit has been stayed by the filing of Debtors' bankruptcy petition since on or about November 10, 2008, and at least one hearing and several key depositions have been cancelled and have had to be rescheduled. The delay is at great cost, prejudice, inconvenience, and continued pain to the Movants, who have suffered significantly already.

7. The Bankruptcy Court has discretion to lift the automatic stay, pursuant to 11 U.S.C. §§ 362(d) and 105(a) to allow the Movants to pursue the Lawsuit in State Court. *See In re Santa Clara County Fair Ass'n, Inc.*, 180 B.R. 564, 565 (9th Cir. (B.A.P.) 1995).

8. The Lawsuit itself is not a core proceeding appropriate to be litigated in the Bankruptcy Court and especially in light of the fact that it has been active in another court, the State Court for nearly four years already. As such, lifting the stay will promote judicial economy and will permit the parties to proceed in an efficient manner. Relief from the stay will not disrupt the bankruptcy process and the Debtors' reorganization. The bankruptcy estate will be protected if the stay is lifted. Some or all of the Movants' claims may be paid by the Debtors' insurance without any requirement for funds otherwise. Any prejudice to the Debtors' estate will be more than offset by the prejudice incurred by the Movants if their Lawsuit is significantly delayed because of the continuation of the stay.

C.

Request For Shortened Notice and Expedited Hearing:

9. Movants respectfully request that this Court grant the Movants, on shortened notice, an expedited hearing thereon on or before December 3, 2008, and immediate and limited relief from stay to prosecute the Lawsuit in State Court with claims against Debtors' insurer within applicable policy limits.

10. There is a significant State Court hearing scheduled for December 4, 2008, in the Cook County Circuit Court on various issues related to the Lawsuit, including, but not limited to, the recusal of the sitting judge, a sanctions award for discovery abuses, multiple discovery motions, and concerns over the destruction of key evidence and/or spoliation of evidence, among other pressing matters raised in the Lawsuit. Thus, pursuant to *Local Rule* 9013-1(N), Movants respectfully request a shortened notice period and expedited hearing on their *Motion for Relief*, so that they may be heard on or before the close of business on December 3, 2008.

D.

Authority For The Relief Requested:

11. Relief from the automatic stay is authorized under 11 U.S.C. § 362(d)(1), which provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as terminating, annulling, modifying, or conditioning such stay-

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest

(emphasis added).

12. The *Bankruptcy Code* does not define the term "for cause." Accordingly, the determination of what constitutes "for cause" to modify the automatic stay must be made on a case-by-case basis. *See In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992). The legislative history of § 362 explains that "cause may be established by a single factor such as 'a desire to permit an action to proceed . . . in another tribunal,'" H.R. Rep. 95-595, 95th Cong., 1st Sess., 343-44 (1977) (emphasis added). Thus, in an identical vein to the *Robbins* case, the Movants seek to permit their Lawsuit to proceed in another tribunal, the State Court.

PRAYER FOR RELIEF:

WHEREFORE, the Movants, by counsel, respectfully request that this Honorable Court (a) grant this *Motion for Relief*, and immediately lift and terminate the automatic stay to permit them to prosecute the Lawsuit to the point of judgment in the State Court, to collect any judgment from any available insurance coverage(s), and/or to settle the Lawsuit and collect any settlement(s) from any available insurance coverage(s); and (b) award Movants such other and further relief as this Court deems just and proper.

Dated: November 26, 2008

Respectfully Submitted,

**REVEREND DWAYNE FUNCHES,
INDIVIDUALLY, AND AS INDEPENDENT
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FUNCHES, JR., EMILY FUNCHES, LOVERA
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